SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TELEPHONE (212) 973-0111
FACSIMILE (212) 891-9598

August 31, 2004

VIA FEDEX AND ELECTRONIC MAIL

Mary Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 03-60; Response to Verizon's August 17 Reply Comments

Dear Ms. Cottrell:

We are writing to alert the Department to an egregious misstatement in Verizon's August 17, 2004 reply comments in the above-referenced proceeding. We respectfully recognize that the procedural schedule does not provide for replies in this instance, but we believe it is essential to alert the Department to this misstatement so that it does not unknowingly rely upon false information in reaching its decision. Verizon's reply comments at page 13 state:

> as virtually every state commission to consider the issue has held, there can be no doubt that in those cases where Verizon MA's interconnection agreement requires Verizon MA to provide access to unbundled network elements only as required by applicable law, the vacatur of unbundling requirements in *USTA II* eliminates any obligation for Verizon MA to provide access to those elements.

On the contrary, *no* state commission to our knowledge has held that *USTA II* eliminates Verizon's obligation to provide access to the UNEs that were the subject of the vacated FCC rules. If one had, Verizon would surely have cited it.[1] While some (but not all) interconnection agreements permit Verizon to withdraw UNEs no longer required by "applicable law," no state commission has concluded that the only law that could possibly be "applicable" is Section 51.319 of the FCC's regulations. The CLECs have repeatedly demonstrated that Verizon

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[1] Perhaps Verizon is referencing the handful of state decisions to deny or defer CLEC "standstill" petitions. However, those decisions typically rested on the grounds that the issue could be resolved on a contract by contract basis or that it should be deferred until Verizon attempts to withdraw a UNE. None reached the merits of whether Verizon remains required to provide these UNEs. Moreover, approximately 10 states and the FCC have granted standstill orders, making false by any standard Verizon's characterization that "virtually every state commission to consider the issue" has agreed with Verizon's position on anything, much less the assertion that *USTA II* eliminates the entirety of Verizon's obligations.

remains required to unbundle high-capacity loops, transport, and switching at TELRIC rates pursuant to the applicable law of Section 251, the Bell Atlantic-GTE Merger Conditions, and now the FCC's August 20, 2004 interim standstill order. Moreover, unless Verizon plans to immediately withdraw its authority to provide interLATA interexchange services, it unquestionably remains obligated to provide access to these facilities under Section 271. Therefore, Verizon's assertion that "*USTA II* eliminates any obligation for Verizon MA to provide access to those elements" is wrong, and its assertion that "virtually every state commission to consider the issue" has so found is patently false.

Respectfully submitted,

Russell M. Blau
Paul B. Hudson

Counsel to ACN Communication Services, Inc.; Allegiance Telecom of Massachusetts, Inc.; Choice One Communications of Massachusetts Inc.; CTC Communications Corp.; DSLnet Communications, LLC; Focal Communications Corporation of Massachusetts; Lightship Telecom, LLC; McGraw Communications, Inc.; RCN-BecoCom, LLC; RCN Telecom Services of Massachusetts, Inc.; segTEL, Inc.; and XO Massachusetts, Inc.

Enclosure

cc: Paula Foley
D.T.E. 03-60 Service List